

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

BEFORE THE CHIEF PROCUREMENT
OFFICER FOR CONSTRUCTION

IN THE MATTER OF: PROTEST
GREENWOOD/BECKMAN HEALTH
CENTER CONSTRUCTION
STATE PROJECT J12-9670-RC
LOVELESS COMMERCIAL
CONTRACTING, INC.

DECISION

POSTING DATE: August 31, 2001

vs.

SOUTH CAROLINA DEPARTMENT
OF MENTAL HEALTH

This matter is before the Chief Procurement Officer for Construction (CPOC) pursuant to a request from Loveless Commercial Contracting, Inc. (Loveless) under the provisions of §11-35-4210 of the South Carolina Consolidated Procurement Code (Code), for an administrative review on the Greenwood/Beckman Health Center Construction project (Project) for the South Carolina Department of Mental Health (DMH). Pursuant to §11-35-4210(3) of the Code, the CPOC evaluated the issues for potential resolution by mutual agreement and determined that mediation was not appropriate. A decision is issued without a formal hearing after a thorough review of the bidding documents and the applicable law.

NATURE OF THE PROTEST

DMH solicited and received bids to perform construction work. DMH determined Loveless to be non-responsive by reason of having submitted a bid listing CarolinaPower as the electrical subcontractor and CarolinaPower is not properly licensed to perform electrical construction work in South Carolina. Loveless protests the agency's determination on the grounds that CarolinaPower does possess a valid license to perform electrical work.

FINDINGS OF FACT

1. On August 15, 2001 DMH received and opened bids for the Project.
2. Bids were submitted using OSE Form SE-330, the second page of which called for the bidder to identify the proposed electrical subcontractor.

3. Loveless submitted a bid listing “Carolina Power” [sic] as its proposed electrical subcontractor.
4. On August 20, 2001 DMH notified Loveless by telephone that Loveless’ bid had been declared non-responsive because CarolinaPower did not possess a valid contractor’s license.
5. On August 20, 2001 Loveless submitted a protest of DMH’s decision to the CPOC.
6. On August 20, 2001 the CPOC requested a determination from the Contractors’ Licensing Board as to whether CarolinaPower was legally entitled to offer electrical construction services within South Carolina.
7. On August 29, 2001 the Executive Director of the South Carolina Contractor’s Licensing Board rendered an advisory opinion to the CPOC with respect to the status of CarolinaPower’s licensing as an electrical contractor. That opinion stated that CarolinaPower is not licensed to bid on or perform electrical work in South Carolina. The license number cited by Loveless is in the name of Metro Power, Inc.

DISCUSSION

PROTESTANT’S POSITION

Loveless contends that the license owner, MetroPower, Inc., is doing business in South Carolina as CarolinaPower and is so registered with the Greenville County Clerk of Court. Loveless contends that MetroPower, Inc. and CarolinaPower are a single entity that does possess a valid contractor’s license.

CPOC FINDINGS

The Contractor’s Licensing Board (Board) is the state authority primarily responsible for enforcing the provisions of the Contractors’ Licensing Act (Act). The CPOC gives great weight to the opinion of the Board as to how the Act should be interpreted and applied to a particular set of circumstances. The Board, through its Executive Director has advised the CPOC that the §40-11-370(B) of the SC Code of Laws, as amended, makes it unlawful for an entity to engage in construction under another name than the exact name which appears on the license. In this case, that name is MetroPower, Inc., not CarolinaPower. The CPOC finds no reason to disagree with the position of the Board on this matter. The CPOC finds that Loveless, by virtue of its failure to

list a proper licensed electrical subcontractor as required by the solicitation, submitted a bid that is non-responsive. The determination of DMH is upheld and the protest of Loveless is denied.

DECISION

It is the decision of the Chief Procurement Officer for Construction that Loveless Commercial Contracting, Inc. submitted a bid listing a subcontractor not licensed to perform electrical work in South Carolina, was thereby non-responsive and cannot be considered for award. DMH is hereby directed to award the Project to the lowest responsive and responsible bidder, consistent with its programmatic requirements.

A handwritten signature in black ink that reads "Michael M. Thomas". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Michael M. Thomas
Chief Procurement Officer
for Construction

August 31, 2001
Date

STATEMENT OF THE RIGHT TO APPEAL

The South Carolina Procurement Code, under Section 11-35-4230, subsection 6, states:

A decision under subsection (4) of this section shall be final and conclusive, unless fraudulent, or unless any person adversely affected requests a further administrative review by the Procurement Review Panel under Section 11-35-4410(1) within ten days of the posting of the decision in accordance with Section 11-35-4230(5). The request for review shall be directed to the appropriate chief procurement officer who shall forward the request to the Panel or to the Procurement Review Panel and shall be in writing setting forth the reasons why the person disagrees with the decision of the appropriate chief procurement officer. The person may also request a hearing before the Procurement Review Panel.